

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Ar'Montay Marshon Johnson,
Minor.

DEPARTMENT OF HUMAN RESOURCES,

Petitioner-Appellee,

v

NICOLE LASHAWN JOHNSON,

Respondent-Appellant.

UNPUBLISHED

August 21, 2007

No. 275531

Oakland Circuit Court

Family Division

LC No. 03-676405-NA

Before: Whitbeck, P.J., and Talbot and Zahra, JJ.

MEMORANDUM.

Respondent appeals as of right an order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(i), (c)(i), (g) and (j). We affirm.

The trial court did not clearly err in finding sufficient evidence to support the statutory grounds for termination. The record reflects that respondent pleaded no contest to an amended petition to terminate her parental rights. She did not file a motion with the court to withdraw her plea, and does not mention the plea on appeal. Respondent thus failed to preserve or present the issue for appellate review. *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989); *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 388; 689 NW2d 145 (2004). Further, the record contains an executed "Plea of Respondent" form, which respondent signed. The form appears valid, and there is nothing in the lower court record to suggest otherwise. Moreover, there is plainly clear and convincing evidence to establish every statutory basis. Defense counsel at one point noted that respondent has "lied, she has exaggerated, and she's done it to try to get better medical insurance for her child and get him on better programs, and yes, she's done it to the detriment of her child." In regard to this issue of pediatric condition falsification (AKA Munchausen by Proxy),¹ Dr. Kellam indicated, about 6 months before

¹ Munchausen syndrome by proxy, a type of factitious disorder, is a mental illness in which a person acts as if a person he is caring for has a physical or mental illness when the person is not actually ill. DSM-IV at 725-726.

respondent's plea, that she "has actually regressed relative to treatment goals she was mandated to accomplish when our therapeutic work was undertaken." At the time respondent filed the petition to terminate respondent's parental rights, the court stated that, "I would like to represent to you that I've read everything and I've got to say that I've seen no improvement, continually no improvement, no improvement, no improvement, no efforts." Given evidence of the lack of progress in treating respondent's pediatric condition falsification, which led to respondent's jury conviction for second-degree child abuse,² MCL 750.136b(3)(c), respondent has failed to show that the court erred.

The trial court also did not clearly err in finding that the children's best interests did not preclude termination of respondent's parental rights. MCR 712A.19b(5). An expert witness in diagnosing pediatric condition falsification, the DHS caseworker and respondent's therapist all testified that the minor child would be at risk of harm if returned to respondent. The expert testified that treatment could take 5 years, and respondent's current therapist would not even venture a prognosis. The minor child has been in the care of his father for over three years, and has done well. The record establishes that respondent has failed to show even marginal progress in treating her condition. The best interests of the minor child require permanency and stability, which respondent cannot provide in the foreseeable future. Therefore, the trial court did not clearly err in its best interests determination.

Affirmed.

/s/ William C. Whitbeck

/s/ Michael J. Talbot

/s/ Brian K. Zahra

² See *People of Michigan v Nicole Lashawn Johnson*, unpublished opinion per curiam of the Court of Appeals, issued November 28, 2006 (Docket No. 262306).